



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240



DEC _ 6 2005

ER 05/0939

Mr. Thomas W. Waters
Chief of Policy and Policy Compliance Division
Headquarters
U.S. Army Corps of Engineers, CECW-P (SA)
7701 Telegraph Road
Alexandria, Virginia 22315-3860

Dear Mr. Waters:

The U.S. Department of the Interior (Department) has reviewed the Chief of Engineers' Proposed Report (Chief's Report) on the U.S. Army Corps of Engineers (Corps), New York District's proposed Hudson-Raritan Estuary, Liberty State Park environmental restoration project located in Jersey City, Hudson County, New Jersey. The Department has also reviewed the Final Environmental Impact Statement (FEIS) prepared by the Corps pursuant to the National Environmental Policy Act of 1969, as amended (83 Stat. 852; 42 U.S.C. 4321 *et seq.*) (NEPA) and submitted in support of the Chief's Report. The Department provides the following comments pursuant to NEPA, the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.* (ESA), and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*) (FWCA).

CHIEF'S REPORT

The Department concurs with the Corps that the Liberty State Park Restoration Area is currently impaired by invasive species, a lack of tidal and freshwater cover types, and moderate levels of environmental contaminants. The Department generally supports the Corps' selected alternative to enhance the Restoration Area for the benefit of fish and wildlife. Therefore, the Department has no further comment on the Chief's Report recommending implementation of the selected plan.

FEIS

The Department's Fish and Wildlife Service (FWS) provided preliminary comments on the project via letter dated November 8, 2002, and a Planning Aid Letter dated July 14, 2004. In November 2004, the FWS delivered a draft report to the Corps pursuant to Section 2(b) of the FWCA. To date, the FWS has not received comments on the draft FWCA Report from the Corps. Via letter dated October 21, 2005 (ER 05/0787), the Department noted that the Draft Environmental Impact Statement (DEIS) did not incorporate, reflect or reference the information

or recommendations contained in the draft FWCA report. The October 21, 2005, Departmental letter also provided detailed recommendations to clarify and correct information contained in the DEIS. We note that the FEIS has not been revised in light of the Department's October 21, 2005 comments.

As noted in the November 2004 draft FWCA report, the FWS' primary recommendation for the project is to approach the creation and management of habitats in the Restoration Area from a perspective of large blocks of marsh, forest/freshwater wetland, and grassland habitats. To this end, the draft FWCA report includes delineation of recommended Management Areas, based on existing vegetative conditions as well as the Corps' Conceptual Plan for the Restoration Area. Other key FWS recommendations include adaptive management of the proposed marsh, control of invasive vegetation, control of feral dog and cat populations, and ongoing monitoring and management of key bird groups in close coordination with the New Jersey Department of Environmental Protection (NJDEP) Endangered and Nongame Species Program (ENSP).

Regarding environmental contaminants, key FWS recommendations include: cap open upland (non-forested) areas; line wetlands, channels, and their slopes with clean material; perform additional sampling (if capping and lining are not feasible) and ensure that contaminant guidelines are not exceeded; maximize the depth of the cap in the North Cove and use low permeable material (clay); include dieldrin, PCB, and dioxin analyses in any additional sampling performed; characterize stormwater runoff; and sample contaminants in all environmental matrices during post-construction monitoring.

FEDERALLY LISTED SPECIES

The following information was previously provided by the FWS in the November 2004 draft FWCA report.

Two federally listed species are known to occur in the vicinity of the proposed Liberty State Park Restoration Area: the bald eagle (*Haliaeetus leucocephalus*) and piping plover (*Charadrius melodus*), both federally listed as threatened. Both species occur as visitors to Liberty State Park from spring through fall. Piping plovers and bald eagles observed in the park to date were most likely transient individuals moving through on migration. The federally listed (endangered) roseate tern (*Sterna dougallii*) may also pass through the area during migration. However, none of these three species currently nests in the vicinity of the park.

The proposed ecosystem restoration may enhance foraging habitat for transient piping plovers and roseate terns that pass through Liberty State Park during migration. The project is not expected to create nesting habitat for these species. Given the distance to known nesting areas, neither piping plovers or roseate terns are expected to make significant use of the project area as foraging habitat during the nesting season. The project is not likely to adversely affect these species; therefore, no further consultation pursuant to Section 7 of the ESA is required with the FWS for the piping plover or roseate tern at this time.

The project may enhance the suitability of habitats in Liberty State Park for migrant bald eagles. Eagle populations are expanding in New Jersey, and improved habitat conditions may attract

eagles to initiate nesting and/or establish a significant wintering area in the park following completion of the project. The FWS anticipates that the proposed habitat modifications will not adversely affect bald eagles. However, indirect adverse effects (*i.e.*, disturbance, low reproductive success) of attracting eagles to the newly enhanced habitats may occur without proper species management.

The Department recommends that the Corps prepare a brief contingency plan for bald eagle management, and complete informal consultation on the plan with the FWS pursuant to Section 7 of the ESA, during the Planning, Engineering, and Design (PED) phase of the project. If desired, the Corps may designate the NJDEP's Division of Parks and Forestry (DPF) (the non-federal sponsor for post-feasibility phases of the project) as its non-federal representative to prepare and implement the eagle management plan, and to conduct consultation. Recommended plan elements include:

- participation in the ENSP's eagle monitoring program;
- participation in the ENSP's blood sampling and nestling banding program;
- restricted public access within 1.0 mile of any nest site or 0.25 mile of any important wintering sites, in accordance with site-specific recommendations of the ENSP;
- ENSP and FWS review of any major construction activities proposed in the future within 1.0 mile of any nest site or 0.25 mile of any important wintering sites (seasonal restrictions and habitat protections may be recommended on a case by case basis).


CONCLUSION

The Department generally supports the selected alternative for habitat enhancements at Liberty State Park, and has no further comment on the Chief's Report. We urge the Corps to continue coordination with the FWS during the PED phase of project planning, to complete ESA consultation for the bald eagle, and to incorporate FWS recommendations into the final project design.

The Department appreciates the opportunity to review the Chief's Report. If you have any questions regarding the above comments, please contact Mr. Clifford G. Day, Supervisor, New Jersey Field Office, U. S. Fish and Wildlife Service, 927 N. Main Street, Building D, Pleasantville, New Jersey 08232, (609) 646-9310.

Sincerely,



 Willie R. Taylor, Director
Office of Environmental Policy
and Compliance

cc: Director, Fish and Wildlife Service
Director, National Park Service
Director, Geological Survey
U.S. Fish and Wildlife Service, NJFO
Army Corps of Engineers, New York District



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
441 G Street N.W.
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

MAY 04 2006

CECW-P (SA)

Mr. Willie R. Taylor
Director
U.S. Department of the Interior
Office of the Secretary
Office of Environmental Policy and Compliance
1849 C Street, NW
Washington, DC 20240

Dear Mr. Taylor:

We have received your agencies' comments of December 6, 2005, regarding the Hudson Raritan Estuary Liberty State Park Ecosystem Restoration Project Feasibility Report and Environmental Impact Statement. We have also received your Fish and Wildlife Coordination Act Section 2(b) Report dated April 2006. We thank you for the critical support from your New Jersey Field Office technical staff on this important and high profile project.

Your detailed comments will be helpful in the implementation of this project, and will be addressed during the Plans and Specifications stage, when the U.S. Army Corps of Engineers New York District will be in a better technical and logistical position to consider, and hopefully implement, a number of your specific technical recommendations. With regard to the proposed contingency plan for the bald eagle, we do not feel that the development of such a plan is appropriate at this time, given that the Fish and Wildlife Service has determined that the proposed project modifications would not adversely affect the species. Normally, a "no adverse affect" determination leads to the closure of the consultation process pursuant to section 7 of the Endangered Species Act. Please be advised that the Corps of Engineers would support the preparation of a bald eagle management plan should the species be attracted to the site in the future, and would enlist the cooperation of the non-Federal sponsor in the event that future consultation under section 7 of the ESA is warranted.

As your staff is aware, there is much more work to do on this project before construction can begin. This work includes the development of detailed engineering designs, invasive species control/re-planting strategies, and plans for monitoring both during and after completion of construction. These will be fully coordinated with the U.S. Department of the Interior, through the NJ Field Office, and the other environmental review agencies, including the New Jersey Department of Environmental Protection, as appropriate.

If there are any questions, please contact Leonard Houston, Chief, Environmental Analysis Branch, New York District, U.S. Army Corps of Engineers, 26 Federal Plaza, Room 2139, New York, NY 10278 at (917) 790-8702.

Sincerely,

A handwritten signature in black ink that reads "Thomas W. Waters". The signature is fluid and cursive, with a long horizontal stroke at the end.

Thomas W. Waters, P.E.
Chief of Planning and Policy Division
Directorate of Civil Works



State of New Jersey

Department of Environmental Protection

Richard J. Codey
Acting Governor

Bradley M. Campbell
Commissioner

Environmental Regulation
Office of Pollution Prevention and Right To Know
401 E. State St., 3rd floor, Trenton, NJ 08625-0423
Tel. (609) 292-3600
Fax (609) 777-1330

November 30, 2005

Mr. Thomas W. Waters
Chief, Policy and Policy Compliance Division
Directorate of Civil Works
U.S. Army of Corps of Engineers
Department of the Army
Washington, D.C. 20314-1000

Dear Mr. Waters:

Thank you for a copy of the proposed report of the Chief of Engineers and the report of the district engineer, including the Final Environmental Impact Statement (EIS) on the Hudson-Raritan Estuary, Liberty State Park, New Jersey. The New Jersey Department of Environmental Protection's (NJDEP) Office of Permit Coordination and Environmental Review commented on the Draft EIS and coordinated the review of the Final EIS. We have no comments on the Final EIS.

We greatly appreciate the time and effort the U.S. Army Corps of Engineers has contributed to the project, and thank you for the opportunity to comment.

Sincerely,

Kenneth C. Koschek
Supervising Environmental Specialist
Office of Permit Coordination
and Environmental Review

C: Frank Gallagher, NJDEP



State of New Jersey

Department of Environmental Protection
PO Box 402
Trenton, NJ 08625-0402

Richard J. Codey
Acting Governor

Bradley M. Campbell
Commissioner
Tel. # (609) 292-2885
Fax # (609) 292-7695

December 2, 2005

Mr. Thomas W. Waters, P.E.
Chief, Policy and Policy Compliance Division
Directorate of Civil Works
U.S. Army of Corps of Engineers
Department of the Army
Washington, D.C. 20314-1000

Dear Mr. Waters:

Governor Richard J. Codey has asked me to respond on his behalf to your letter of November 3, 2005 regarding the proposed report of the Chief of Engineers and the report of the district engineer, including the final Environmental Impact Statement (EIS), on the Hudson-Raritan Estuary, Liberty State Park, New Jersey.

The New Jersey Department of Environmental Protection's Office of Permit Coordination and Environmental Review commented on the draft EIS and is coordinating the review of the final EIS. The Office will provide comprehensive departmental comments on the final EIS if additional comments are warranted.

The project will greatly enhance habitat viability within Liberty State Park and add to the passive recreation opportunities enjoyed by millions of visitors per year. We greatly appreciate the time and effort the U.S. Army Corps of Engineers has contributed to this project.

Please contact Mr. Ken Koschek of the Office of Permit Coordination and Environmental Review at (609) 292-3600 if you have any questions regarding participation in the environmental review process.

Sincerely,

Bradley M. Campbell
Commissioner